

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

1. STEVE COWHERD and ALICIA ) COWHERD, Individually and as next friends ) of T.C. and H.C., ) Plaintiffs, ) vs. ) 1. SAEXPLORATION SEISMIC ) SERVICES, LLC, and, ) 2. FRANCISCO JAVIER GARCIA ) Defendants. )	) ) Case No. CIV-21-729-F
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**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants SAExploration Seismic Services, LLC and Francisco Javier Garcia (“Defendants”), submit this Notice of Removal of *Steve Cowherd and Alicia Cowherd, Individually and as next friends of T.C. and H.C.* v. *SAExploration Seismic Services, LLC and Francisco Javier Garcia*, filed in the District Court of the State of Oklahoma, County of Garfield, Case No. CJ-2021-133, on the ground that this Court has original jurisdiction under 28 U.S.C. §§ 1332 and 1441 *et seq.*, diversity of citizenship exists between Plaintiffs and Defendants, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

**BACKGROUND**

1. On June 29, 2021, Plaintiffs filed their Petition in the District Court of Garfield County, Oklahoma. The Petition alleges counts or claims of negligence and negligence per se and seeks punitive and actual damages. Plaintiffs allege damages in

excess of the amount required for diversity jurisdiction under 28 U.S.C. § 1332. (See Petition, attached hereto as Exhibit 1).

2. On July 3, 2021, Plaintiffs served a copy of the Summons and Petition upon Defendant, Francisco Javier Garcia. A copy of the Summons is attached hereto as Exhibit 2. A copy of the Return of Service is attached hereto as Exhibit 3.

3. On July 2, 2021, Plaintiffs served a copy of the Summons and Petition upon Defendant, SAExploration Seismic Services, LLC. A copy of the Summons is attached hereto as Exhibit 4. A copy of the Return of Service is attached hereto as Exhibit 5.

4. Pursuant to 28 U.S.C.A. § 1446(a) and LCvR 81.2, a copy of the docket sheet is attached hereto as Exhibit 6.

**REMOVAL IS TIMELY**

5. This Notice of Removal is timely, as it is being filed on July 22, 2021, within 30 days of Defendants first receiving what purports to be service of a Summons and Petition setting forth the alleged claims for relief upon which this action or proceeding is based. 28 U.S.C. § 1446(b).

**THIS COURT HAS SUBJECT MATTER JURISDICTION  
UNDER 28 U.S.C. § 1332 - DIVERSITY OF CITIZENSHIP**

6. Removal under 28 U.S.C. § 1441 *et seq.* is appropriate because this case is an action over which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332 as the amount in controversy exceeds \$75,000, exclusive of interest and costs; and complete diversity of citizenship exists between Plaintiffs and Defendants. 28 U.S.C. §§ 1332 & 1441.

7. The United States District Court for the Western District of Oklahoma includes the county in which the state court action is now pending (Garfield County). Thus, removal to this Court is appropriate. 28 U.S.C. § 1446(a).

**THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

8. In their Petition, Plaintiffs claim damages in excess of the amount required for diversity jurisdiction pursuant to 28 U.S.C. § 1332. (*See* Exhibit 1, Petition, at “Wherefore” paragraphs).

**COMPLETE DIVERSITY OF CITIZENSHIP EXISTS  
BETWEEN PLAINTIFFS AND DEFENDANTS**

9. Diversity of citizenship is determined by the citizenship of all properly joined parties as of the date of the filing of the original Petition.

10. Upon information and belief Plaintiffs are citizens of Garfield County, Oklahoma.

11. Defendant, Francisco Javier Garcia, was a resident of San Antonio, Texas at the time of the filing. Therefore, Defendant is a citizen of Texas for purposes of diversity jurisdiction. *Smith v. Cummings*, 445 F.3d 1254, 1259 (10th Cir. 2006).

12. Defendant SAExploration Seismic Services, LLC is a limited liability company. For purposes of diversity jurisdiction, an unincorporated association “takes on the citizenship of all its members.” *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1238 (10<sup>th</sup> Cir. 2015) (citing *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990)). Here, SAExploration Seismic Services, LLC takes on the citizenship of its sole member, SAExploration, Inc. SAExploration, Inc. is incorporated under the laws of

Delaware with its principal place of business in Houston, Texas. Therefore, at the time of filing, Defendant SAExploration Seismic Services, LLC was a citizen of Delaware and Texas for purposes of diversity jurisdiction. (*See* 28 U.S.C. § 1332(c)(1)).

13. Thus, at the time Plaintiffs' Petition was filed, Defendants were citizens of a state other than Oklahoma and Plaintiff was a citizen of Oklahoma. Accordingly, complete diversity exists. (*See* 28 U.S.C. § 1332(a)).

**NOTICE GIVEN**

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiffs through their counsel of record. Further, notice of the filing of this Notice of Removal has been sent to the Court Clerk for the District Court of Garfield County, Oklahoma.

**PRESERVATION OF RIGHTS**

15. By removing this action to this Court, Defendants do not waive any defenses, objections, or motions available to it under state or federal law. Defendants expressly reserve the right to move for dismissal of Plaintiffs' claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

16. If any question arises as to the propriety of this removal, Defendants request the opportunity to conduct discovery or brief any disputed issues and to present oral argument in support of their position that this civil action is properly removable. *See McPhail v. Deere & Co.*, 529 F.3d 947, 954 (10th Cir. 2008).

WHEREFORE, based on the foregoing, Defendants SAExploration Seismic Services, LLC and Francisco Javier Garcia give notice that the above-captioned matter is

hereby removed to the United States District Court for the Western District of Oklahoma, and hereby request that this Court retain jurisdiction for all further proceedings herein.

RESPECTFULLY SUBMITTED this 22nd day of July, 2021.

FOLIART, HUFF, OTTAWAY & BOTTOM

*/s/Ashley M. Thul*

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ATTORNEYS FOR DEFENDANTS  
SAEXPLORATION SEISMIC SERVICES, LLC  
AND FRANSISCO JAVIER GARCIA

**CERTIFICATE OF SERVICE**

[X ] I hereby certify that on this 22nd day of July, 2021, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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*s/Ashley M. Thul*

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